REMARKS

The Examiner has correctly pointed out that Claim 18 is a duplicate of Claim 15 and that Claim 16 is a duplicate of Claim 14. By this Amendment, Claims 16 and 18 have been canceled to overcome the objection raised in the first section of the Office Action.

The Examiner has rejected Claims 1, 3-5 and 14-16 "under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention." Specifically, the Examiner has objected to the use of the term "sufficient" in the phrase "to provide sufficient porosity" in Claim 1. It is the Examiner's position that the term "sufficient" is a relative term that renders the claim indefinite. The Examiner goes on to state that the specification does not provide a standard for ascertaining the requisite degree, and that a person of ordinary skill in the art would not be reasonably apprized of the scope of the invention. Applicant respectfully disagrees with the Examiner's position.

It is well recognized that the use of relative terms to describe an amount of material for providing a specified function is an accepted means of defining an invention. In the present application, Applicant has clearly provided sufficient guidance to a person skilled in the art as to what constitutes a "sufficient amount of a void creating additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive ... ."

In particular, the Examiner's attention is directed to pages 7 and 8 of the specification. Specifically, in the first full paragraph on page 7, after stating that a preferred voiding agent is calcium carbonate in the 1 to 5 micron particle size range, Applicant goes on to state that most preferably the calcium carbonate is of a 1 to 2 micron particle size

and is present in an amount of 20% to about 60% by weight of the skin layer to achieve the desired porosity. The relevant disclosure does not stop here.

In the second full paragraph on page 7, the Applicant states his belief that if less than 20% of a 1 to 2 micron calcium carbonate is employed there will insufficient porosity to absorb the required moisture levels from the aqueous cold glue adhesives employed in the labeling applications. Applicant also points out his belief that quantities in excess of 60% are believed to adversely affect the processability of the skin layer.

Based upon the above disclosure, a person skilled in the art clearly can ascertain, with a minimum of effort and experimentation, the amount of a particular void creating additive that is sufficient to achieve the desired benefits of the invention, as specified in Claim 1.

Essentially, if the amount of the void creating additive added to the skin layer does not permit the necessary absorption of liquid from an aqueous cold glue adhesive to render the product usable, then that amount of the void creating additive will be outside the scope of coverage of the claims. On the other hand, if an excess quantity of a void creating additive is used so as to prevent adequate processing of the film, that higher amount likewise will be outside the scope of the claimed invention.

The present specification provides clear guidance to a person skilled in the art as to the preferred particle size range for the void-creating additives usable in this invention, and the factors that need to be considered in determining the percentage of such void-creating additives that should be employed.

Applicant submits that he should not be required to set forth a specific percentage range of a void creating additive in the broadest claim, since such a range

would be unduly limiting on the broadest aspects of the present invention. Clearly, the percentage range can vary depending upon the type of void-creating additive employed and the particular particle size of such additive. Applicant is entitled to the coverage he is seeking, and has provided a clear and complete disclosure of the factors that need to be taken into account by a person skilled in the art in determining the proper amount of a void creating additive that should be employed.

In view of the above remarks, Applicant respectfully requests that the Examiner withdraw her objection to the use of the term "sufficient" in defining the degree of porosity achieved in this invention. Moreover, Applicant has amended Claim 1 to also state that the amount of the void creating additive that is added be "a sufficient amount" to provide sufficient porosity to achieve the stated result of absorbing the aqueous cold glue adhesive.

The Examiner also has objected to Claims 14-16, based upon her opinion that it is not clear whether the entire film is biaxially oriented or whether one of the layers is biaxially oriented. Applicant respectfully disagrees with this position.

Claims 14-16 are either directly or indirectly dependent upon Claim 1. Claim 14, which is directly dependent upon Claim 1, states that "said film is a biaxially oriented polyolefin film." (emphasis added). It is apparent that the word "film" has only one meaning in Claim 1, from which Claim 14 depends. The various layers making up the film are referred to as "layers." It is clear that the reference to "film" in Claim 1 refers to the entire, multilayer structure. There is only one antecedent basis in Claim 1 for the term "film" as that term is utilized in Claim 14. Applicant submits that the only proper interpretation of Claim 14 is that the entire film, which includes both the internal core layer

and the opposed outer skin layers, is biaxially oriented. If Applicant intended to recite a structure wherein only one or more of the layers was biaxially oriented, the dependent claim would, of necessity, have referred to the "layers" that were biaxially oriented, rather than referring to "said film."

In view of the above remarks, Applicant submits that the rejection of Claims 14-16 as being indefinite should be withdrawn.

The Examiner rejected Claims 3-5, based upon her position that the reference to "said calcium carbonate" did not have a sufficient antecedent basis. Applicant agrees with the Examiner's position and has amended Claims 3-5 to provide proper antecedent basis.

The Examiner has rejected Claims 1-3, 11, 14 and 16-17 "under 35 U.S.C. 102(b) as being anticipated by Mauer et al., U.S. Pat. No. 5,800,913." The Examiner also has rejected Claims 4, 5, 9 and 10 "under 35 U.S.C. 103(a) as being unpatentable over Mauer et al., U.S. Pat. No. 5,800,913."

Applicant has amended Claim 1 to more particularly point out the patentably novel features of this invention. The Applicant submits that these amendments do not actually alter the scope of protection, but do emphasize what is apparent from the written description.

Claim 1 has been amended to particularly state that the outer skin layers are optimizable thinner than the internal core layer. It is well understood by people skilled in the art that the reference to the outer layers as being "skin layers" clearly refers to a structure wherein the skin layers are thinner than the internal core. Moreover, the present specification makes this abundantly clear. Specifically, on page 6, Applicant notes that the core of this

invention has a thickness of approximately 200 gauge; that the skin layer for receiving the metallized coating thereon has a thickness of approximately 20 gauge or less, and that the opposed skin layer for receiving the cold glue adhesive has a thickness in the range of 15-25 gauge. Thus, it is apparent that the opposed skin layers are substantially thinner than the internal core. This same relationship between the core layer and the opposed skin layers also is set forth in the Example beginning on page 10.

In view of the present disclosure Applicant submits that the specification clearly supports the amendment presented herein, that the skin layers are thinner than the core layer. Claim 1 also specifies that one of the skin layers includes a void creating additive in it, whereas the other skin layer is a non-voided layer. Claim 1 does not include any limitation with respect to voiding agents either being present or being omitted from the internal core layer, which is the thickest component of the structure.

The Mauer et al. '913 patent clearly does not anticipate or render obvious the structure specified in Claim 1.

The Mauer et al. '913 patent discloses a heat-sealable, white-opaque, biaxially-oriented, multilayer polyolefin film which, in its broadest terms, comprises three essential layers. These layers are: (1) a core or base layer (K), which is the thickest component of the film, (2) at least one interlayer (Z), and (3) at least one out layer (D), thereby forming a structure KZD. These three layers are required to be present in all of the multilayer structures disclosed in the Mauer et al. '913 patent. Disclosed multilayer structures including these three layers are DKZD and DZKZD, as stated in column 2, lines 21-32 of the patent.

In the Mauer et al. '913 patent, the core layer (K), which constitutes at least 50% of the overall thickness of the film, is a voided layer containing from 2 to 30% by weight of vacuole-inducing particles therein. The interlayer (Z) also is a voided layer which contains from 1-25% by weight of vacuole-inducing particles. The outer layer (D) is described as a non-voided layer which can be corona- or flame-treated and metallized (column 7, lines 35-39).

The three component structure disclosed in Mauer; namely, the structure KZD is not a structure having an internal core with opposed skin layers that are thinner than the core. In fact, in this latter structure the outer layer "K" is identified as a core layer constituting at least 50% of the overall film thickness. Thus, the layer "K" is the thickest component of the three-layer structure, and therefore does not constitute a skin layer as that term is employed in Claim 1 of this application.

In the more preferred embodiments, i.e., DKZD and DZKZD, the outer skin layers D are identified as being non-voided layers. Thus, in this structure there is no outer skin layer that is voided, let alone an outer skin layer having a sufficient amount of a void creating additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive.

This brings us to a further deficiency in the teachings of the Mauer et al. '913 patent; namely, that it is not at all concerned with the formation of a metallizable, white opaque film intended to receive an aqueous cold glue adhesive of the type that is employed to adhere a label to a container. Specifically, there is absolutely no disclosure of using any cold glue adhesive with the structure disclosed in Mauer et al. In fact, a cold glue adhesive would not be desirable for use in the disclosed structures DKZD and

DZKZD, because the outer skin layers "D" are not voided to absorb an aqueous cold glue adhesive.

In view of the above remarks, Applicant submits that Claim 1 sets forth patentably novel subject matter and therefore an indication to that effect is respectfully requested.

Claims 2-15, 17 and 19-20, which are all of the remaining claims in this application, are either directly or indirectly dependent upon Claim 1 and therefore are submitted to be patentable for the same reasons discussed above in connection with Claim 1. Moreover, a number of the dependent claims set forth unique features that are not remotely suggested by the prior art of record.

Claims 2-5 are each dependent upon Claim 1 and specify certain preferred percentages of calcium carbonate employed in the opposed outer skin layer that is intended to receive an aqueous cold glue adhesive thereon. This feature in combination with the features specified in parent Claim 1 is neither shown nor suggested in the prior art of record and therefore Claims 2-5 are submitted to be patentable thereover.

Claim 6 is dependent upon Claim 1 and specifies that the opposed outer layer, which is the layer for receiving the cold glue adhesive thereon, is oxidatively treated to enhance the adherence of the cold glue adhesive to said outer skin layer. This feature in combination with the features specified in parent Claim 1 is neither shown nor suggested in the prior art of record and therefore Claim 6 is submitted to be patentable thereover.

Claims 7-10 are dependent upon Claims 2-5, respectively, and each includes the same limitation as is set forth in Claim 6 relating to the oxidative treatment of the opposed outer skin layer. Accordingly, the feature of oxidatively treating the opposed outer

skin layer set forth in each of Claims 7-10 in combination with the features specified in the parent claim or claims from which each depends, is neither shown nor suggested in the prior art of record and therefore Claims 7-10 are submitted to be patentable thereover.

Claim 11 is dependent upon Claim 1 and specifies that the internal core is free of void creating additives. This is the most preferred structure of the invention, and this feature, either alone or in combination with the features in parent Claim 1 is neither shown nor suggested in the prior art of record. Specifically, in the Mauer et al. '913 patent, the internal core "K" is a voided layer containing from 2 to 30% by weight of vacuole-inducing particles. This is in direct counter distinction to the preferred invention specified in Claim 11.

Claims 12 and 13 are dependent upon Claims 1 and 6, respectively, and each sets forth the most preferred thicknesses of the core layer and the opposed skin layers. The features set forth in Claims 12 and 13 in combination with the features specified in the parent claim from which each depends is neither shown nor suggested in the prior art of record and therefore Claims 12 and 13 are submitted to be patentable thereover.

Claims 14 and 15 are dependent upon Claims 1 and 6, respectively, and each specifies that the film is a biaxially oriented polyolefin film. This feature in combination with the features of the parent claim from which each of Claims 14 and 16 depends is neither shown nor suggested in the prior art of record and therefore Claims 14 and 15 are submitted to be patentable thereover.

Claims 17 and 19 are dependent upon Claims 1 and 6, respectively, and each specifies that a metal layer is included on the outer surface of said one of said outer

layers. This feature in combination with the features of the parent claim from which each of Claims 17 and 19 depends is neither shown nor suggested in the prior art of record and therefore Claims 17 and 19 are submitted to be patentable thereover.

Claim 20 specifies that a label is cut from the multilayer film of Claim 17, and that the label is intended to be part of a stack of labels for removal from the stack to be applied to a bottle or other suitable container with the metal layer facing outwardly of the bottle or other suitable container. A label structure as set forth in Claim 20 is neither shown nor suggested in the prior art of record and therefore Claim 20 is submitted to be patentable thereover.

In view of the above remarks, Applicant submits that all of the claims presented herein for reconsideration set forth patentably novel subject matter, and an indication to that effect is respectfully requested.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
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By _____

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

In the Claims:

Please cancel Claims 16 and 18.

Please rewrite Claim 1 in the following manner:

1. (Amended) A multilayer, metallizable, white opaque film including at least an [a] internal core layer and opposed outer skin layers thinner than said core layer, one of said outer skin layers being a non-voided layer having a surface thereof oxidatively treated to receive a metal layer thereon and the opposed outer skin layer including [an] a sufficient amount of a void creating additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive of the type employed to adhere a label to a container.

Please amend Claim 3 in the following manner:

3. (Amended) The multilayer film of claim 1, wherein said void creating additive is [said] calcium carbonate, said calcium carbonate being [is] present in an amount of at least 25% by weight, based on the weight of said opposed outer layer.

Please amend Claim 4 in the following manner:

4. (Amended) The multilayer film of claim 1, wherein said void creating additive is [said] calcium carbonate, said calcium carbonate being [is] present in an amount of at least 35% by weight, based on the weight of said opposed outer layer.

5. (Amended) The multilayer film of claim 1, wherein said void creating additive is [said] calcium carbonate, said calcium carbonate being [is] present in an amount of at least 40% by weight, based on the weight of said opposed outer layer.

CERTIFICATE OF MAILING

I hereby certify that the foregoing AMENDMENT UNDER 37 CFR 1.111 and 1.115 and PETITION FOR EXTENSION OF TIME, re Application Serial No. 09/778,325, are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, Washington, D.C., 20231 on this 25th day of November, 2002.

Martin L. Faigus